

**MORRIS LAW GROUP**

900 BANK OF AMERICA PLAZA · 300 SOUTH FOURTH STREET · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

MORRIS LAW GROUP  
Steve Morris, Bar No. 1543  
Email: sm@morrislawgroup.com  
Akke Levin, Bar No. 9102  
Email: al@morrislawgroup.com  
Jean-Paul Hendricks, No. 10079  
Email: jph@morrislawgroup.com  
300 South Fourth Street - Suite 900  
Las Vegas, Nevada 89101  
Telephone: (702) 474-9400  
Facsimile: (702) 474-9422

SNELL & WILMER L.L.P.  
Alex Fugazzi, Bar No. 9022  
Email: afugazzi@swlaw.com  
Justin Carley, Bar No. 9994  
Email: jcarley@swlaw.com  
3883 Howard Hughes Parkway, #1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MARY ANN SUSSEX; et al.,	)	Case No.: 2:08-cv-00773-MMD-PAL
	)	
Plaintiffs,	)	<b>EMERGENCY MOTION TO</b>
	)	<b>STAY PROCEEDINGS IN</b>
v.	)	<b>ARBITRATION PENDING</b>
	)	<b>DISPOSITION OF MOTION TO</b>
TURNBERRY/MGM GRAND	)	<b>DISQUALIFY AND REMOVE</b>
TOWERS, LLC, et al.,	)	<b>ARBITRATOR BRENDAN HARE</b>
	)	
Defendants.	)	
	)	

**I. INTRODUCTION: THE REASONS FOR THIS MOTION.**

Turnberry/MGM Grand Towers, LLC ("Turnberry/MGM"), moves the Court on an emergency basis under LR 7-5 to stay AAA arbitration proceedings under Brendan Hare pending final disposition of Turnberry/MGM's motion to disqualify and remove Mr. Hare as the arbitrator in this case. The motion to disqualify Mr. Hare was filed on September 11, 2013; briefing was completed on October 4. Turnberry/MGM has set out in its motion papers and exhibits convincing proof in the form of Mr. Hare's own undisclosed words and conduct in 2011 and 2012 that render him unqualified to serve as a neutral arbitrator in this case. Nonetheless, Mr. Hare has scheduled a pre-arbitration hearing for November 19. Any rulings he may make then and any award he may thereafter enter will be vacated because of his demonstrated disqualifying partiality, as Turnberry/MGM's moving papers confirm, under Nevada and/or federal law.

Turnberry/MGM should not have to proceed with a hearing on November 19 before Mr. Hare to address matters and motions that will define the merits issues that will be the subject of an arbitration that the evidence shows he is not suitable to preside over. Turnberry/MGM should not be subjected to this hearing or to protracted and burdensome arbitration proceedings thereafter only to start over when Arbitrator Hare's award is vacated and he is disqualified for his known, established evident partiality. Nev. Rev. Stat. 38.241.1(1)(b)(1); Fed. Arb. Act, 9 U.S.C. §10(a)(2).<sup>1</sup>

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<sup>1</sup> On May 20, 2013, in a status check in a companion case before Judge Mahan, he discussed arbitrator disqualification and remarked to plaintiffs' counsel, "If I were in . . . the defendants' position, . . . the time to disqualify the arbitrator is now, not wait until he makes an award . . .," Dkt. No. 59, at

1 **II. THE EMERGENCY UNDERLYING THIS MOTION AND**  
 2 **COMPLIANCE WITH LR 7–5(d).**

3 (1) *The nature of the emergency:* Although he is not a neutral  
 4 arbitrator and 160 claimants—including some in this case—have agreed to  
 5 his disqualification, Mr. Hare has scheduled substantial pre-arbitration  
 6 matters for hearing on November 19. Unless stayed, he will then address  
 7 and decide various issues and previously filed motions of the parties in  
 8 preparation for commencing formal arbitration on the merits. He should  
 9 not conduct any hearings or preside over any activities in arbitration until  
 10 his status is settled by the Court. As Turnberry/MGM's pending motion  
 11 shows, and Clark County District Judge, Mark Denton observed, he is *not* a  
 12 neutral arbitrator, which Turnberry/MGM is entitled to under the  
 13 governing arbitration agreement and federal and state law, a point Judge  
 14 Mahan and this Court have expressed an interest in.

15 (2) *The names and contact information for movant and all affected*  
 16 *parties.* See the Declaration of Alex Fugazzi, attached as Exhibit A.

17 (3) *Good faith efforts to resolve this matter without Court action:*  
 18 Turnberry/MGM's counsel, Alex Fugazzi, spoke to Riccardo  
 19 Ehmann, counsel for plaintiffs, on November 6 to request agreement to  
 20 request a stay of the arbitration and the November 19 hearing pending  
 21 disposition of the pending motion to disqualify and remove Mr. Hare as  
 22 the arbitrator in this case. Plaintiffs declined to agree to a stay. *See id.*,  
 23 Ex. A, and Mr. Ehmann's email confirming their "meet and confer" and  
 24 compliance with Rule 7–5(d)(3).

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 26  
 27  
 28 6:4–10, App'x, Vol. 2, to Motion to Disqualify, TMGM 263, which is  
 precisely what the defendants seek by the pending Motion to Disqualify.

1 **III. THE COURT'S OBSERVATION IN THE ABRAHAM CASE ON**  
2 **THE DISQUALIFICATION OF ARBITRATOR HARE SUPPORTS**  
3 **GRANTING A STAY WHILE THE MOTION TO DISQUALIFY IS**  
4 **BEING DECIDED.**

5 Following the filing of the pending Motion to Disqualify  
6 Arbitrator Hare, counsel for the parties in this case attended another status  
7 check before Judge Mahan, on September 30, in the companion *Abraham*  
8 case. The Court was informed that this Motion to Disqualify had been  
9 filed. In response, Judge Mahan said the arbitrator's status concerned him  
10 and remarked, **"If he is going to be disqualified, then hopefully we can**  
11 **get a new arbitrator and move on."** Tr. September 30, 2013, at 9:1–4,  
12 attached as Exhibit 1 to the Declaration of Akke Levin, filed in support of  
13 this Motion to Stay (emphasis added). The Court concluded its discussion  
14 of disqualification with a reference to the pending Motion to Disqualify  
15 Arbitrator Hare: "We'll see what the Magistrate Judge [Honorable Nancy J.  
16 Koppe] does with the motion to disqualify the arbitrator and then  
17 hopefully we can get this going." *Id.* at 10:2–4. There is no reason to waste  
18 the parties' time and resources in an arbitration before an arbitrator that  
19 will be disqualified. Doing so will lead only to further protraction of this  
20 litigation rather than expeditious resolution as Turnberry/MGM and the  
21 plaintiffs agreed to when they entered their arbitration agreements.  
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1 **IV. CONCLUSION**

2 This motion should be granted and proceedings in arbitration  
3 under Brendan Hare should be stayed until the Court has finally disposed  
4 of the pending motion to disqualify Mr. Hare.

5 MORRIS LAW GROUP

6  
7 By: /s/ STEVE MORRIS

8 Steve Morris, Bar No. 1543

9 Akke Levin, Bar No. 9102

10 Jean-Paul Hendricks, Bar No. 10079

11 900 Bank of America Plaza

12 300 South Fourth Street

13 Las Vegas, Nevada 89101

14 SNELL & WILMER L.L.P.

15 Alex Fugazzi, Bar No. 9022

16 Justin Carley, Bar No. 9994

17 3883 Howard Hughes Parkway, #1100

18 Las Vegas, NV 89169

19 Attorneys for Attorneys for Defendants

20 Turnberry/MGM Grand Towers, LLC,

21 MGM Grand Condominiums, LLC,

22 The Signature Condominiums, LLC

23 Turnberry/Harmon Ave., LLC and

24 Turnberry West Realty, Inc

**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of district of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS LAW GROUP, and that the following documents were served via electronic service: **EMERGENCY MOTION TO STAY PROCEEDINGS IN ARBITRATION PENDING DISPOSITION OF MOTION TO DISQUALIFY AND REMOVE ARBITRATOR BRENDAN HARE TO:**

Robert B. Gerard  
Ricardo R. Ehmann  
Gerard & Associates  
2840 So. Jones Blvd. - Bldg. D, Ste 4  
Las Vegas, Nevada 89146  
[rgerard@gerardlaw.com](mailto:rgerard@gerardlaw.com)  
[rehmann@gerardlaw.com](mailto:rehmann@gerardlaw.com)

Burton Wiand  
Wiand Guerra King  
3000 Bayport Drive - Suite 600  
Tampa, Florida 33607  
[bwiaand@wiandlaw.com](mailto:bwiaand@wiandlaw.com)

Norman B. Blumenthal  
Kyle Nordrehaug  
Donald Scott Macrae  
Blumenthal Nordrehaug & Bhowmik  
2255 Calle Clara  
San Diego, California 92037  
[norm@bamlawlj.com](mailto:norm@bamlawlj.com)  
[kyle@bamlawlj.com](mailto:kyle@bamlawlj.com)  
[smacrae@bamlawlj.com](mailto:smacrae@bamlawlj.com)

Daniel Marks  
Law Offices of Daniel Marks  
302 East Carson Avenue, Ste. 702  
Las Vegas, Nevada 89101  
[office@danielmarks.net](mailto:office@danielmarks.net)

Attorneys for Plaintiffs

Attorneys for Plaintiffs

Dated this 7th day of November, 2013

By: /s/ PATRICIA FERRUGIA